

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL MAROM,

20 CV 03486 (PMH)

Plaintiff,

-against

TOWN OF GREENBURGH
ANTHONY SCARPINO, Jr
COURTNEY JOHNSON
ED DEMALO
MARK GORDON
AUDREY PIEROT

Defendants,

The motion to dismiss (Doc. 11) is denied without prejudice to re-filing in accordance with my Individual Practices, in particular Rule 4(C). My Individual Practices are available on the S.D.N.Y. website at <https://nysd.uscourts.gov/hon-philip-m-halpern>. Defendant Gordon is directed to serve copies of this Order on all pro se parties.

SO ORDERED.



Philip M. Halpern
United States District Judge

Dated: New York, New York
June 16, 2020

Mark Gordon, hereby respectfully submits, under penalty of perjury the following in support of his motion to dismiss the amended complaint of the plaintiff:

1. I am one of the defendants in this action. I make this affirmation in support of the motion to dismiss plaintiffs amended complaint pursuant to Federal Rule 12 (b)(6) for failure to state a claim upon which relief may be granted.
2. Furthermore, Section 1983 does not provide a specific statute of limitations which is the time limit in which a claim must be brought after the alleged violation occurred. However, 42 U.S.C.A. 1988(1976) states that where the federal law does not provide a statute of limitations, state law shall apply. Therefore, pursuant to CPLR 215[3], this action has exceeded the statute of limitations for malicious prosecution, which is one year and is consequently time barred.
3. Plaintiff fails to plead facts that plausibly either implicate or demonstrate that Gordon was involved in any way with the alleged malicious prosecution. In fact, plaintiff actually presents sufficient facts within the amended complaint which state the opposite. One example, the letter submitted to the District Attorney by Gordon withdrawing the statement to the police and to the District Attorney will be addressed later.
4. Plaintiff has failed to also provide any facts or information demonstrating any malice on the part of Gordon. Plaintiffs motivation to file this instant action is frivolous, and with malice. This instant action is merely a continuation of his unrelenting harassment of the defendant and should be sanctioned pursuant to Federal rule 11.
5. This Court should dismiss with prejudice plaintiff's complaint in its entirety and grant the relief requested in these motion papers.